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CURRENT TOPICS

Golden Wedding

SIR HARRY PRITCHARD (senior partner in the firm of Sharpe, Pritchard & Co.) and LADY PRITCHARD celebrated their golden wedding on the 5th April, and we tender them both our hearty congratulations. His father, Andrew Goring Pritchard (for many years head of the firm), and mother celebrated their golden wedding in 1912, and his grandfather, Andrew Pritchard, and grandmother celebrated theirs in 1879. Sir Harry was born in 1868. He is a past-president of The Law Society and was a member of the Royal Commission on Local Government and secretary to the Association of Municipal Corporations.

Mr. Timothy Sullivan, K.C.

MR. TIMOTHY SULLIVAN, K.C., LL.D., who died at the age of seventy-five on 29th March, was formerly President of the Supreme Court and Chief Justice of Eire. He was called to the Bar at the King's Inn, Dublin, in 1895, and took silk in 1918. On the Munster circuit, immortalised by his brother-in-law Maurice Healy in a book of reminiscences, he built up a large practice. He was appointed Chief Justice in 1936 and resigned in 1946, having been a member of the judiciary for twenty-two years. Though never active in politics, his leanings were known to be nationalist, and he was the first President of the High Court to be appointed when the Free State Judiciary was constituted in 1924.

Solicitors and Reconciliation

A GRATIFYING reference to the work of solicitors in assisting in the reconciliation of parted couples has been made in the annual report of the principal probation officer to the Berkshire Probation Committee for the twelve months ended on 30th November, 1948. The eight probation officers of the county had over 2,000 interviews with the parties concerned during the year. It is noted as an encouraging sign that 27 per cent. of the cases dealt with were as a result of a direct approach to the probation officer by one of the aggrieved parties. Having regard to the fact that solicitors are not directly concerned with the work of reconciliation it is the more remarkable that a further 10 per cent. were referred by solicitors, and the report welcomes this friendly co-operation. "Your officers," states the report, "could cite many cases in which solicitors have been of very real help, especially in cases of financial need, and their sympathy and insight has been of the greatest encouragement." The work of reconciliation between married couples is vital to the life of the nation, as the Government's announced intention to assist marriage guidance councils shows, and the help given by the profession in Berkshire is typical of what is happening all over the country. It is all the more creditable to the profession because it is spontaneous.

The Widow's £1,000

THE change in the value of money which has occurred in the last two decades is being recognised by the courts and is reflected in the sums awarded as damages for personal injuries and the like. There are some who would apply the same principle to the statutory pecuniary legacy of £1,000 which passes to the surviving spouse on an intestacy and who argue that the time has come when this sum should be increased or even doubled. If the value of the estates of persons dying intestate had risen in sympathy with the fall in the value of the £ this argument would be unanswerable, but there is no evidence of such a development and, since any addition to the payment to the spouse entails a corresponding reduction in the sum available for the rest of the family, it is the size of the estate rather than the real value of the money which should be the governing factor. The present system, which applies the same rules of distribution on intestacy regardless of the size of the estate, has the merit of simplicity and involves the assumption that a person with a large estate will take steps to make a will. The need for such persons to avoid intestacy is now greater than ever.

The Budget

To the lawyer the most interesting proposal in this year's Budget is undoubtedly the decision to abolish the legacy and succession duties. Details of the proposal are not known at the time of writing, but one thing at least is clear: this reform affords a unique opportunity for the long-awaited consolidation of our death-duty laws, an opportunity which must not be allowed to pass. Other proposals of interest to solicitors include a considerable simplification of the existing estate duty relief in respect of agricultural property and the abolition of certain stamp duties, notably on letters of allotment, scrip certificates, proxies and bills of lading, and the repeal of the controversial duty on bonus issues of securities imposed in 1947.

Private Charitable Gifts

WHETHER private charity really is worth while is a question which must frequently have occurred to solicitors drawing wills and deeds of gift during the past few years. It behoves Chancellors of the Exchequer to ask themselves this question when preparing their budgets, because, if the answer is in the affirmative, they should suit their actions to their words. Heavy income tax, sur-tax and other duties are not an end in themselves, but only a means to an end, and institutions of social importance should not be erased in the process of levelling out incomes and curbing private expenditure. Mr. JOHN CHRISTIE, founder of the Glyndebourne Festival, writes with authority in *The Times* of 1st April on the subject of charitable subscriptions in the form of seven-year covenants. Where the tax is 19s. 6d. in the £ the giver, he wrote, has to use £22 of his top income to get twenty-two sixpences to provide a net sum of 11s., on which the charity can recover 9s. income tax, thus getting its £1. Before Mr. Dalton's 1946 Budget the rich man used £1 of his top income to provide £1 for the charity. Mr. Christie wrote that the present position is making income payments practically impossible to the Church, to animals, to art, and in these and other cases the State does not contribute, or hardly contributes with success.

Church Notice Boards and the Town and Country Planning (Control of Advertisements) Regulations, 1948

THE Diocese of Manchester have issued notes for the assistance of incumbents, churchwardens and parochial church councils on the effect of the Control of Advertisements Regulations upon church notice boards. To the question, "Are church notice boards 'advertisements'?", the answer given is "Yes," because "advertisement" is given a wide definition in the regulations and is not confined to commercial advertisements, but the regulations are not concerned with the terms of any poster or notice. It is stated that a church may have one notice board without the express consent of the local planning authority, unless challenged by them, provided the board does not exceed twelve square feet in area; or, if the church has an entrance on different streets or roads, two boards on different streets or roads are allowed. All church notice boards which were in existence on the 1st August, 1948, may remain until the 1st August, 1951, or if they were only put up after the 7th January, 1947, until the 1st August, 1949. After the appropriate period of grace, an existing notice board may still remain unless challenged by the local planning authority. An advertisement about an event connected with a church or church activity may be displayed without express consent, provided that (*a*) it does not exceed six square feet, and (*b*) it is not displayed more than twenty-eight days before and is removed fourteen days after the event takes place. The notes have been sent to all parochial church council secretaries in the diocese, and are obtainable from Diocesan Church House (Room 8), 90, Deansgate, Manchester, 3.

Bankruptcy Notices and the Exchange Control Act

AN order issued by the Board of Trade (the Exchange Control (Bankruptcy Notices) Order, 1949: S.I. 1949 No. 585) prescribes the form of a bankruptcy notice to be issued at the request of a person residing outside the scheduled territories who is a creditor for an account due under a judgment, order or award. Two forms are prescribed, to be used according to whether or not Treasury permission for payment into a blocked account has been obtained.

Office Workers

WORKERS in offices are closely affected by the recommendations in the Final Report of the Gowers Committee (Cmd. 7664, price 2s.), published on 31st March. The committee, which was appointed under the chairmanship of Sir ERNEST GOWERS in January, 1946, and made an interim report on the closing hours of shops in January, 1947, now makes proposals with regard to sanitary accommodation, ventilation, temperature, lighting, underground rooms, working space, seats, etc. Maximum working hours a day, it is suggested, should be nine, exclusive of intervals for meals and rest. Existing statutory restrictions on the working hours of juveniles should be extended to protect 92½ per cent. of all employed juveniles, instead of 65 per cent. as at present. The maximum working hours in a week, the report recommends, should be forty-five for juveniles over school-leaving age and under eighteen, except in a few occupations, including mining, where they should be forty-eight. One half-day and one rest day in each week are recommended for all young workers. Present-day shortages in accommodation and staff are not overlooked in the report, which refers to "a certain unreality" in the committee's proceedings, as a result of Britain's grave economic difficulties. Although the recommendations may not all be immediately practicable, now is certainly the time for laying down standards which should be a constant guide when conditions begin to improve.

Public Appointments

SIR STAFFORD CRIPPS has disposed of the suggestion that there is any political flavour about the practice exemplified in the recent letter from the Treasury to the Bank of England asking for the names of persons who would be suitable for important public work. He has also clearly established that it is a practice which has his entire approval. In reply to Mr. KEELING, in the Commons on 29th March, he stated that the request was not for persons willing to be considered for important public work, but for persons thought suitable for such work. The work included service on advisory committees and the like and had no particular reference to socialised industries. The arrangements for improving the Government's lists were necessarily informal and confidential. It had long been the custom to keep a list of such persons and from time to time it was necessary to renew it. There is no objection to the arrangements being either informal or confidential, especially so far as unpaid services are concerned. In the case of paid services the accredited organisations, such as The Law Society, are the proper sources of information, but it would certainly remove any feeling of unfair treatment if all paid public appointments were duly advertised and did not depend on the chances of recommendations, however impartial the recommendation.

Pedestrian Crossing Week

IN connection with the National Pedestrian Crossing Week, 3rd to 9th April, the Pedestrians' Association has issued a leaflet of simple instruction in the observance of the crossings by vehicle users, and the use of the crossings by pedestrians. Already advance orders have been received for about 350,000 copies, mainly from local authorities. The hints in the leaflet, which clearly state the legal principles and common-sense rules involved, include advice to motorists and cyclists at light-controlled crossings, such as that even when the light is in their favour they must proceed with due regard for the safety of other road users; and at uncontrolled crossings, such as not to pull up sharply at the last moment, except in an emergency, but if pedestrians have started to cross to reduce speed in good time; to be specially careful if full view of a crossing is obscured by another vehicle, or when a crossing is in a one-way street, and never to try to hoot a pedestrian off a crossing. Pedestrians arewarned that they have no priority at light-controlled crossings, unless they have started to cross before the signal releasing the traffic has been given. They are also advised not to step off suddenly when a vehicle has almost reached a crossing.

Recent Decision

In *Re Owen; Owen* v. *Inland Revenue Commissioners*, ROMER, J., held, on 31st March (*The Times*, 1st April), that the actual date of gifts by cheque was not the date when the cheques were sent by the donor or received by the donee, but when they were paid into the bank. The materiality of the date arose from the question whether the gifts had been made within three years preceding the testator's death.

GOOD ESTATE MANAGEMENT : RIGHTS AND DUTIES

THE expression " good estate management " has, during the past eighteen months, figured in two decisions under the Landlord and Tenant Act, in one new statute, and in one decision at common law. It is one of those expressions which courts and Parliamentary draftsmen seem anxious to use but not to define in precise language, but the trend seems to be towards imposing, on those who find themselves in control of property, more duties towards more people.

At one time it might have been thought that the duty, if any, was just one which qualified the rights of a landlord against his tenant. " What do you mean by good estate management ? " asked Farwell, L.J., of counsel in the course of his argument in *Re Bonnett* [1913] 2 K.B. 537 (C.A.) : the answer " acting fairly between landlord and tenant " might be described as a forensic one, but the gist of the decision was that in considering whether a landlord of an agricultural holding had given notice to quit " for reasons inconsistent with good estate management " for the purposes of the Agricultural Holdings Act, 1908, all that had to be gone into was whether the landlord had acted capriciously. The refusal of the tenant to agree to an increase of rent was held not to be such a reason, and the court approved observations made by Lord Dunedin, then President of the Court of Session, in *Brown* v. *Mitchell* [1910] S.C. 369, in similar circumstances arising under the corresponding provision of the corresponding Scottish enactment. Lord Dunedin's observations made the point that to be consistent with good estate management, reasons for determining a tenancy need not be agricultural reasons : they might include such reasons as assembling disgraceful company upon the premises, habitually insulting or being disagreeable to the landlord and his family. But, as the learned President remarked, part of the difficulty was due to the phraseology of the provision : reasons not inconsistent with, etc. This, of course, did not exactly invite a definition of what good estate management actually was ; but Lord Dunedin did conclude the observations with the provocative " Good estate management means getting as much as your property is worth."

Coming to the recent occasions : The Landlord and Tenant Act, 1927, s. 5, entitles a tenant of business premises to a new lease, provided on the one hand that he fulfils certain conditions, and provided on the other hand that the landlord does not prove certain things. Among the former we find : " that the grant of a new tenancy is in all the circumstances reasonable " (subs. (2)) ; as regards the defence, subs. (3) directs that the grant shall not be deemed to be reasonable, *inter alia*, if the landlord proves intention to occupy the premises ; to demolish them ; that vacant possession is required for redevelopment purposes ; or that " for any *other* reason the grant . . . would not be consistent with good estate management, and for this purpose regard shall be had to the development of any other property of the same landlord."

The importance of the concluding provision (subs. (3) (*b*) (iv)) was demonstrated in *G. C. & E. Nuthall* (1917), *Ltd.* v. *Entertainments & General Investment Corporation, Ltd.* [1947] 2 All E.R. 384, and again in *Clift* v. *Taylor* (1948), 92 SOL. J. 361. In the former the applicants had held a lease of a café attached to a cinema, the two being physically connected. When the lease was granted, the owners of the cinema undertaking had little experience of running cafés, but protected their interest by covenants in the lease. When it expired, cafés in cinemas were no longer an innovation, and in 95 per cent. of the cinemas which they owned the respondents had cafés conducted by themselves or at all events not by tenants. Without attempting a definition of " good estate management " Hallett, J., upheld the referee's report, concluding that for these reasons the grant sought would not be consistent with such. It would appear that efficient control from the point of view of yield is at least one feature of good estate management so regarded. The same considerations appear to have operated in *Clift* v. *Taylor*, though there was less occasion to go into the point as the court held that the tenant had not qualified for compensation at all, and that, if she had, the landlord required the premises (a teashop on the ground floor of a building the rest of which was occupied by the landlord's firm, whose business, that of land agents, had grown) for his own occupation. But in his judgment Scott, L.J., did go on to say that in view of the overwhelming evidence of need " we cannot imagine a clearer case of bad estate management than a decision by a senior partner to throw away the opportunity . . ."

The Agriculture Act, 1947, takes rather a broader view of good estate management, and devotes one section, s. 10, to describing, though not defining, what it means by the expression. The gist is that the owner of agricultural land shall, *for the purposes of the Act*, be deemed to fulfil his *responsibilities* to manage it in accordance with the rules of good estate management, in so far as his management is such as to be reasonably adequate, having regard to the character and situation of the land and other relevant circumstances (which do not include his personal circumstances : s. 109 (3)), to enable an occupier of the land reasonably skilled in husbandry to maintain efficient production as respects both the kind of produce and the quality and quantity thereof. Efficient production is thus the criterion, and in that respect the subsection accords well with Lord Dunedin's " getting as much as your property is worth." But Lord Dunedin did not suggest that there was any duty to get as much as one's property was worth ; and what the subsection deals with is not rights, but responsibilities. And we find that failure to observe the rules may result in supervision orders and directions and even dispossession under Part I of the Act, and that when a farm is let a landlord may now be obliged to enter into a covenant to reinstate or replace buildings damaged or destroyed by fire when necessary for the purpose of fulfilling the responsibilities (enacted in Part III : replaced by the Agricultural Holdings Act, 1948 : see s. 5 and Sched. I, para. 7).

But an even wider conception of the scope of the duties referable to good estate management appears to have been accepted by Lord Goddard, C.J., in the recent case of *Caminer and Another* v. *Northern and London Investment Trust, Ltd.* (1948), 92 SOL. J. 720. The plaintiffs in that case, when driving in their car past a block of flats of which the defendants were lessees, were injured by the fall of a large elm tree which was in the forecourt of that block. Evidence showed that the tree was diseased, though this was not apparent ; that it had a very large crown ; that arrangements had been made, but not yet carried out, to lop and top it with a view to tidiness. On these facts the learned judge held that the defendants were liable for the injuries sustained by the plaintiffs, and while reference is made to a duty to take precautions with regard to trees adjoining a highway it seems that this is regarded as part of the duty of good estate management. " It could not be doubted that it was the duty of all owners of property to manage their property in accordance with the principles of good estate management, so that their property might not be in a condition likely to cause damage to persons lawfully using the highway, and, if good estate management involved the inspection and trimming of trees from time to time, there was a duty on landowners to carry out those operations " is a passage which may be contrasted rather than compared with Lord Dunedin's definition.

I do not think that a duty to manage in accordance with the principles of good estate management has ever been referred to or relied on in other cases of this kind. *Bruce* v. *Caulfield* (1918), 34 T.L.R. 204, a case in which adjoining premises were damaged by a falling branch, was brought on the grounds of private nuisance, negligence and trespass. In *Noble* v. *Harrison* [1926] 2 K.B. 332, a highway case, the main issue was whether the defendant was liable for damages for public nuisance ; it was held that he was not, as he did not

know and had no means of knowing of the condition of the tree which had damaged the plaintiff's vehicle; but it was never suggested that he infringed any duty of good estate management. In *Wilchick* v. *Marks* [1934] 2 K.B. 56, in which a non-occupying landlord was held liable for the fall of a shutter because he had reserved the right to repair and knew of its defective condition, Goddard, J. (as he then was), reviewed the authorities on nuisance with great thoroughness, basing his conclusion on principles enunciated by Abbott, C.J., and Littledale, J., in *Laugher* v. *Pointer* (1826), 5 B. & C. 547: "I have the control and management of all that belongs to my land or my house; it is my fault if I do not exercise my authority so as to prevent injury to another" and "Where a man is in possession of fixed property he must take care that his property is so used and managed that other persons are not injured." In *Sedleigh-Denfield* v. *St. Joseph's Society for Foreign Missions* [1940] A.C. 880, when occupiers of a ditch were ultimately held liable for a nuisance adopted or continued by them, the speeches refer this liability to possession and control of property. In none of these cases was the duty of good estate management introduced into the arguments or judgment. The defendants in *Caminer* v. *Northern & London Investment Trust, Ltd.*, owned several properties, and behind the tree was a block of flats occupied by a number of tenants; but it surely cannot be the case that the plaintiffs would have no remedy if the tree had been in the front garden of a private house?

R. B.

THE LEGAL AID BILL IN COMMITTEE

(Continued)

WHEN the committee resumed on 29th March it continued the discussion of the Government amendment (referred to at p. 209, *ante*) designed to deal with professional privilege. As was to be expected, the main criticism was directed to the provision making a wrongful disclosure a criminal offence, and Mr. Manningham-Buller moved a further amendment deleting this. He suggested that the existing sanctions for a breach of professional conduct were adequate and that the additional safeguard proposed would merely have the effect of deterring members of the profession from taking part in the scheme. This argument received support from laymen and lawyers on both sides, but Lt.-Col. Lipton thought that the proposal was justified in view of the fact that misconduct by an applicant was also made a criminal offence. The Attorney-General, in reply, indicated that it was only intended to make wrongful disclosure a criminal offence when it was committed by an employee of The Law Society or a member of one of the committees. Special provisions were necessary in such cases since there would be no professional relationship with the applicant, and they had therefore followed the precedent adopted in the case of disclosure by an income tax official. The clause was not, however, intended to provide criminal sanctions for a breach of confidence by a solicitor or barrister selected by the applicant from one of the panels; in such a case enforcement of the duty of confidence would be left to the normal disciplinary bodies. Mr. Manningham-Buller doubted whether the clause was in fact limited in this way (and certainly it was somewhat obscurely worded), and he appealed to the Attorney-General to withdraw the amendment and to introduce a reconsidered version on the Report stage. This the Attorney-General agreed to do. The profession will, it is thought, wholeheartedly agree that it is vital that a duty of confidence should be clearly imposed on all who receive information at any stage and that as such information will be obtained in cases other than those in which a professional relationship exists, additional sanctions may be necessary. If in fact it is decided to make wrongful disclosure a criminal offence it is difficult to believe that any lawyer (to whom secrecy has become second nature) will be seriously disturbed or deterred from entering into the scheme. On the other hand, anything which savours of nationalisation is highly unpopular, and the proposal smacks rather of the Official Secrets Act and tends to place the lawyers operating the scheme in a position similar to that of Civil Servants. On the whole, therefore, the profession will probably feel happier if the enforcement of the duty can be left in its hands.

A Government amendment providing that proceedings for offences under the Bill might be commenced within two years after the commission of the offence or six months after its discovery, whichever is the shorter, was agreed to without a division. The normal limitation period of six months for summary offences is obviously inappropriate, since if aid was obtained by false pretences this fact would probably not come to light until trial, which might well be more than six months later.

Among further agreed amendments of less importance was one by the Government adding to the interpretation clause in such a way as to make it clear that the Lord Chancellor might by regulation extend the scope of possible legal aid to proceedings before an arbitrator. It will be remembered that the exclusion of arbitration proceedings was strongly criticised during the Second Reading, and the critics have now been met to some extent. The Attorney-General made it clear that there was no immediate intention to extend the scheme to arbitrations, but in view of the arguments put forward it had been thought right to take power to do so if, in the light of experience, that seemed possible. This is undoubtedly a useful concession; the more that is left to relatively flexible regulations the better chance there is of finally evolving a really workable and worth-while service.

The committee then turned to the provisions dealing with legal aid in criminal proceedings, upon which two points were raised. First, the Attorney-General implemented an undertaking given on the Second Reading to introduce an amendment to make it clear that legal aid might be given even when the accused had pleaded guilty, if there were extenuating circumstances which should be properly presented to the court in mitigation of sentence. This was agreed to without discussion. Secondly, Mr. Manningham-Buller raised the important question of whether extended provisions should not be made for allowing counsel to be briefed in cases before magistrates' courts. The Attorney-General indicated that this had been discussed with The Law Society and the Bar Council, and that it was intended at a later stage to introduce an amendment enabling the solicitor to bring in counsel in appropriate circumstances, provided that there is thereby no increase of costs. This is satisfactory so far as it goes, but the proviso regarding increased costs causes some disquiet. In our experience if counsel is briefed it is scarcely possible for some slight increase in costs to be avoided if both solicitor and counsel are to be properly remunerated, and what seems likely to happen is that the solicitor, in the interests of his client, will relinquish some part of the costs to which he is entitled. This in fact appears to be another unfair piece of Treasury cheese-paring at the expense of solicitors.

The first of the new clauses to be incorporated in the Bill was that moved by the Attorney-General and designed to fill the gap between oral advice on the one hand and aid in litigation on the other. The general lines of the clause were set out at p. 155, *ante*, and, as pointed out, it only applies in the first instance (though it can be extended by regulation) to applicants so poor that they would be entitled to civil aid without being called upon to make any contribution. If the adviser at the centre considers that such a person requires something more than oral advice (e.g., help in negotiations or correspondence) he will require the applicant to make a simple statutory declaration as to his means, and if satisfied that these are within the limits, will issue a certificate entitling him to select a solicitor on the panel. The Attorney-General indicated that the limit of costs which the solicitor would be

entitled to receive would be £15, but that he could apply to the local committee for authority to incur additional expenditure. Unless this limit has to be exceeded there will be no reference to the certifying committee or the National Assistance Board, and the advising solicitor at the centre will have to make the calculations to determine disposable income and capital.

As was to be expected, this clause received a general welcome, although regrets were expressed that initially it was to be restricted within such narrow limits. Not only may this deprive applicants of the help that they require, but it will also make for considerable complication. As was pointed out, applicants will be entitled to oral advice without any means test, some will be entitled to further assistance after a means test carried out by the advising solicitor, and others will be entitled to aid in litigation after a means test carried out by the National Assistance Board. Those who are precluded from obtaining further assistance because their means exceed the minimum limits will be sent away by the centre to handle negotiations themselves, or to consult solicitors in the normal way, but if their efforts to settle prove abortive they will be able to come back into the scheme once more and obtain a civil aid certificate if their means are within the maximum limits. The solution adopted can therefore hardly be regarded as an ideal one from the point of view either of the advising solicitors at the centres or of applicants, and those whose means just exceed the minimum limits for non-contributory aid are likely to find it unsatisfactory. However, it is probably the most generally acceptable compromise obtainable at present. If events confirm the belief that the need for advice and assistance in negotiations and correspondence will prove far greater than the demand for aid in litigation, then no doubt regulations will extend the financial limits of this clause, but until this is done there is an obvious risk of an unnecessary burden being placed on the certifying committees and National Assistance Board because of applications for assistance in litigation which could have been avoided if proper assistance had been available at an earlier stage.

The next new clause adopted was that to which reference has been made in earlier articles, subrogating the Legal Aid Fund to any rights of indemnity which the applicant may have. The new clause was in slightly different form from that originally tabled, the alterations being designed to make it clear that the fund was never to be in a better position than the applicant. If, therefore, the applicant had no right enforceable by legal action (which will be the normal position of a member against his trade union) neither will the fund. It will be remembered, however, that under cl. 11, as amended (see p. 208, *ante*), the applicant can be refused civil aid until he has exhausted the possibility of obtaining outside assistance normally granted in such circumstances, even although he has no legal right to it.

The committee then adopted another clause proposed by the Government, making it clear that reasonable remuneration should be paid to solicitors and counsel in criminal cases. The gross inadequacy of the present scales of remuneration under the existing rules was pointed out by the Rushcliffe Committee and the removal of this hardship has always been an integral part of the new scheme. The Attorney-General also agreed that the Lord Chancellor's Department would endeavour to see that uniformity was preserved throughout the country. (This will be facilitated as a result of another new clause providing that taxation of costs in magistrates' courts shall be undertaken by The Law Society and not by the clerks.) One point of interest which emerged was that it is not proposed to abolish dock briefs. Obviously, the cases in which these will have any application will be severely restricted once the new scheme comes into operation, but it seems anomalous that an accused who has been refused legal aid should nevertheless be entitled to brief any counsel who happens to be in court for a mere £1 3s. 6d., and the refusal to abolish this practice seems to be based on nothing more than a respect for an outworn tradition.

Mr. Manningham-Buller moved a new clause providing that a notice should be printed on every county court summons informing the defendant of his rights under the scheme. He indicated that the clause was merely exploratory and designed to obtain an assurance from the Government that full publicity would be given to the scheme so as to ensure that litigants were aware of their rights. This assurance was given but doubts were expressed on whether the method proposed was the most suitable and, if so, why it should be limited to a county court summons, and the clause was withdrawn.

Mr. Royle then moved a new clause providing that the magistrates and not the certifying committee should be the authority for granting legal aid in civil cases before magistrates' courts. This proposal was in accordance with the recommendations of the Rushcliffe Committee, and Mr. Royle argued that it would prevent undue delay and the hardship of forcing the parties to repeat the intimate story of their domestic differences to a group of possibly unsympathetic lawyers as well as to the magistrates. Two objections were put forward by the Attorney-General and seem unanswerable. The first was that only if the normal civil aid procedure was adopted would the applicant be properly advised as to the courts in which to proceed. At present the maximum financial provision for a wife which can be made by magistrates is £2 per week, and it might well be that she should therefore be advised to proceed instead in the High Court and be granted aid accordingly. The second objection was that if the magistrates granted aid to one party and not to the other they would give an appearance of having prejudged the issue, and the unsuccessful applicant would not believe that he had been given a fair trial. It was pointed out that the position in criminal cases was quite different, since there the only question was whether aid should be given to the accused, not whether one party should be preferred to the other. These arguments convinced the committee (including Mr. Manningham-Buller, himself a member of the Rushcliffe Committee) which rejected the clause by seventeen to three.

Finally, Mr. Manningham-Buller brought forward a new clause providing that an applicant for free legal aid in a criminal case should be required to make a statutory declaration as to his means. The Attorney-General said that the Government had been contemplating achieving a somewhat similar result by regulation under the Bill. He thought that a statutory declaration might cause undue delay in the case of applications which could be made by letter or orally in court, and said that what they had in mind was a simple questionnaire with the possibility of a subsequent investigation by the National Assistance Board. Mr. Manningham-Buller regarded this as a satisfactory alternative and withdrew his clause.

L. C. B. G.

BASTARDY

THE power of a court of summary jurisdiction to make a bastardy order is conferred by the Bastardy Laws Amendment Act, 1872. Section 3 reads "Any single woman . . . may . . . apply to a justice . . . for a summons against the alleged father . . ." and s. 4 "After the birth of such bastard child . . . the justices . . . shall hear the evidence of such woman . . . and if the evidence of the mother be corroborated . . . may adjudge the man to be the putative father of such bastard child; and they may also . . . make an order . . . for the payment . . . of a sum of money weekly not exceeding 20s. a week . . . and of such costs . . ."

The summons must be obtained from and heard by the justices of the petty sessional division, etc., in which the woman resides; and the complaint must be laid either before the birth of the child, or within twelve months thereafter; but (i) if the alleged putative father has paid money for its maintenance within twelve months after its birth the complaint

may be laid at any time, and (ii) if the alleged putative father has ceased to reside in England within twelve months following the birth of the child, the time limit of twelve months begins to run again on his return to England.

Normally, payments under the order commence on the date when the order is made, but the justices may direct payments to run as from the date of birth of the child if the complaint was laid either before the birth, or within two months thereafter. The order may also include payment of the expenses incidental to the birth and, if the child has since died, of the funeral expenses.

The case must come before the court within forty days of the service of the summons and the order remains effective until the child attains the age of thirteen years, but the justices have power, which they frequently exercise, to direct that the payments shall continue to the age of sixteen (s. 5); and the order may at any time be revoked, revived, or varied by a subsequent order (Criminal Justice Administration Act, 1914, s. 30 (3)), though the justices have no power to revoke the adjudication of paternity.

So much for the outline of the provisions of the Act of 1872. The practical application of the Act, however, is not as simple as appears at first sight.

Before a woman can obtain a bastardy order she must establish the following facts: firstly, she must prove her own status as a "single woman"; secondly, she must, if she is married, "bastardise" the child; and, thirdly, she must "affiliate" it. It is proposed to consider these three essentials *seriatim*.

In the first place, the expression "single woman" is nowhere defined in the Act; it is not synonymous with "unmarried woman"; and in fact a married woman may achieve the status of a "single woman," for the purpose at any rate of the Bastardy Laws Amendment Act, 1872, in a variety of ways. A decree of judicial separation (Supreme Court of Judicature (Consolidation) Act, 1925, s. 184), and a separation order made by justices (Summary Jurisdiction (Married Women) Act, 1895, s. 5, and see *Boyce* v. *Cox* [1922] 1 K.B. 149) both have this effect; and if a married woman is separated from her husband by reason of military service and whilst so separated commits adultery which is not condoned by her husband, she also is a "single woman" (*Jones* v. *Evans* [1944] K.B. 582; *Hockaday* v. *Goodenough* (1945), 89 SOL. J. 392). Further, where a woman is living separate and apart from her husband she is a "single woman" even though she and her husband may be living in the same house, provided that they are living in different parts of it and that neither of the parties owns or rents the house (*Watson* v. *Tuckwell* (1947), 62 T.L.R. 634); it seems, however, that if either party is the owner or tenant of the house, the position may be different (*Evans* v. *Evans* (1947), 91 SOL. J. 664): this last-mentioned case was, however, disapproved in the later case of *Hopes* v. *Hopes* (1948), 92 SOL. J. 660, and it should be pointed out that both these cases were decided under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895–1925, and not under the Bastardy Laws Amendment Act.

The date on which the status of single woman must exist is, of course, the date of the application for an affiliation order, and not the date of conception or birth of the child; *vide* the remarks of Atkinson, J., in *Jones* v. *Evans*, *supra*, and of Darling, J., in *Marshall* v. *Malcolm* (1917), 87 L.J.K.B. 491. It therefore follows that in seeking to establish her status as a single woman the complainant may herself give the necessary evidence, provided that if she is married she limits her evidence to her status at the time of the application, as the non-access rule laid down in *Russell* v. *Russell* [1924] A.C. 687 only applies to the question of access at the date of conception. Further, where the mother of an illegitimate child marries, she thereupon loses her status of a single woman and cannot apply for a bastardy order against the putative father of the child unless and until, by reason of divorce or otherwise, she again acquires the status of "single woman." The marriage of the mother of an illegitimate child does not, however, put an end to a bastardy order obtained by her before marriage; such an order remains enforceable notwithstanding the marriage of the mother (*Hardy* v. *Atherton* (1881), 7 Q.B.D. 264).

Having established her status, the complainant, if she is married, must then proceed to "bastardise" the child; and since this can only be done by proving that her husband is not the father, the "non-access rule" laid down in *Russell* v. *Russell*, *supra*, of course applies. It is not proposed in this article to deal at any length with this rule, but it may be useful to mention the case of *Andrews* v. *Cordiner* [1947] K.B. 665, where a regimental record, produced by a warrant officer from the R.A.F. Records Office, showing that at all material times the complainant's husband was serving overseas, was held to be admissible under the Evidence Act, 1938, to prove non-access.

The date of conception can seldom be ascertained with certainty. The normal period of gestation is 275–280 days, but cases have been known where periods of 174 days (*Clark* v. *Clark* [1939] P. 228) and 346 days (*Wood* v. *Wood* [1947] P. 103) have been regarded as not impossible; due attention must, however, always be paid to the state of development of the child at birth, and no fixed limits can be laid down; each case must be decided on its own individual facts, having particular regard to the medical evidence produced to the court.

A child born to a woman married at the time of its birth is presumed in law to be legitimate; this presumption may, as has already been stated, be rebutted by evidence of non-access by the husband, provided that in giving proof of such non-access the rule laid down in *Russell* v. *Russell* is complied with, and that at the time of the application the mother of the child has the status of a single woman. This presumption of legitimacy is, however, reversed if at the date of conception of the child the mother and her husband were separated by a decree of judicial separation made by the High Court, or by a separation order (not merely a maintenance order) made by justices under the Summary Jurisdiction (Married Women) Act, 1895, s. 5. In such cases the child will be presumed illegitimate unless the contrary is proved, and as this presumption amounts to a presumption of non-access, the rule in *Russell* v. *Russell* has no application (*Andrews* v. *Andrews and Chalmers* [1924] P. 255). Whether or not a separation by agreement between the parties, e.g., by deed, has the same effect is open to doubt (see *Mart* v. *Mart* (1925), 42 T.L.R. 253, and *Re Bromage*, *Public Trustee* v. *Cuthbert* (1935), 51 T.L.R. 408).

Having established her own status and the illegitimacy of the child, it only remains to prove paternity; in this respect the complainant is under no handicap as regards the rule in *Russell* v. *Russell*; she not only can, but must, give evidence herself as to paternity (*vide* s. 4 of the Act of 1872, quoted in brief at the commencement of this article). Her evidence, however, must be corroborated; the corroboration must be such as to implicate the respondent (*Reffel* v. *Morton* (1906), 70 J.P. 347), and it must involve something more than possibility, and tend to show probability, evidence of mere opportunity for intercourse being insufficient (*Burbury* v. *Jackson* [1917] 1 K.B. 16). Frequently the defendant has admitted to the complainant, in the presence of a third party such as her father, that he is responsible for her pregnancy, and in such cases the necessary corroborative evidence can be given by the third party; but it must be borne in mind that the complainant cannot corroborate herself, so that if the corroboration sought to be adduced consists in the production of letters written to her by the defendant, his handwriting must be proved by a witness other than the complainant herself (*Johnson* v. *Pritchard* (1933), 97 J.P.News. 754).

The defendant himself is a competent witness, not only in his own defence, but also in support of the complainant's case; if he refuses to give evidence, the complainant may apply for a witness summons against him to compel him to do so. Once he has been sworn as a witness, he is bound to answer questions properly put to him, and if he refuses he

may be committed by the justices (*R.* v. *Flavell* (1884), 49 J.P. 406). Consequently, where the complainant has received letters from the defendant admitting paternity which she seeks to use as corroboration, but cannot produce evidence other than her own as to handwriting, it is common practice for the defendant to be called as a witness, on a witness summons if necessary, and for him simply to be asked if he admits writing the letters; if he replies in the affirmative, his answer and the letters themselves may provide the necessary corroboration of the complainant's testimony.

If an application for a summons is made within the time limited by the Act of 1872, and the summons granted on it is dismissed owing to a technical objection, a second summons, or, if necessary, a series of summonses, may be issued upon the original complaint notwithstanding that it is too late to make a fresh application. Where, however, the first summons is dismissed or withdrawn, not because of a technical objection, but because of lack of corroborative evidence, the original application is spent and no new summons can be issued upon it; but in such circumstances, provided that the time limited by the Act has not expired, a fresh application may be made by the mother and a second summons issued upon it, a previous dismissal being regarded as a non-suit rather than as a hearing on the merits (*R.* v. *Clark* (1864), 28 J.P. News. 102), and a previous withdrawal being no hearing at all (*R.* v. *Seddon, ex parte Hall* (1916), 80 J.P. 208). When, however, the first hearing is on its merits, the principle of *res judicata* applies (*R.* v. *Clark, supra*).

Appeal is to the King's Bench Division by way of case stated on a point of law or jurisdiction; or to quarter sessions, which is of course a re-hearing.

E. G. B. T.

DAMAGE BY ROOTS: TRESPASS OR NUISANCE?

ALTHOUGH these islands are well wooded and heavily urbanised, there is singularly little authority in the books on the subject of damage to property caused by the extension of roots into a neighbour's property and their interference with his structures. It was, however, early established that the fact that one's soil nourishes the roots of another's tree gives no proprietary right in the tree (*Masters* v. *Pollie* (1620), 2 Rolle 141). This was an action for "trespass *quare clausum fregit et asportavit* the plaintiff's boards." The plaintiff had cut down the tree and "carried it into his own house and sawed it into boards, and the defendant entered and took away some of the boards." It was held that as the main body of the tree was in the plaintiff's land all the rest of the tree belonged to him also. Montague, C.J., said: "The plaintiff cannot limit the roots of the tree, how far they shall go."

In that phrase lies the root of the difficulty in deciding whether liability exists for the wanderings of, and incidental damage by, objects which are hidden under the soil and largely beyond the control of their owner. Therein also lies a possible distinction between liability for overhanging branches, and liability for extending roots. There is, of course, ample authority on liability for branches, and indeed it is in *Lemmon* v. *Webb* [1894] 3 Ch. 1, a case dealing solely with branches that we find the first exposition, by way of *obiter dicta*, of an argument as to liability for roots. Kay, L.J., says, at p. 19: "The encroachment of roots within the land of the adjoining owner is not a trespass or occupation of that land which by lapse of time could become a right. It is a nuisance. For any damage occasioned by this an action on the case would lie." Gale on Easements, 11th ed. (1932), at p. 438, elaborates this *dictum* as follows: "As regards boundary trees there appears to be no authority in English law that in the absence of express stipulation an easement can be acquired by user to compel a man to submit to the penetration of his land by the roots of a tree planted on his neighbour's soil. The principal objections to the acquisition of such an easement consist in the secrecy of the mode of enjoyment and the perpetual change in the quantity of inconvenience imposed by it." He goes on to deal with the abatement of what Kay, L.J., first referred to as a *nuisance* thus: "Supposing no easement to exist, there seems nothing to take this out of the ordinary rule, that a man may abate any encroachment on his property, and therefore that he may cut the roots of a tree so encroaching in the same manner that he may an overhanging branch." In *Lemmon* v. *Webb*, Lindley, L.J., at p. 14, said: "and the owner of the tree is not entitled to notice unless his land is entered in order to effect such cutting [of roots]." But is there not this distinction between roots and branches: branches when cut will fall into the land of the party abating the nuisance and he can take due precautions, but the cutting of roots of a large tree may involve serious danger to the owner? Should he not therefore be always entitled to notice before a serious danger is, in effect, secretly created upon his land by operations carried out elsewhere?

At all events, until 1913, it appears, there was only the *dicta* in *Lemmon* v. *Webb* as to whether extending roots constituted a nuisance or a trespass, and as to whether there was liability for damage due to them. In that year two cases were decided in different parts of the Empire, both being very much in point. In New Zealand the case of *Rose* v. *Equity Boot Co., Ltd.* [1913] N.Z.L.R. 677, arose in this way: the parties occupied adjoining land; on the defendant's land there stood an avenue of trees a few inches from the plaintiff's land. The plaintiff alleged that roots from these trees had spread into his land to such an extent as to break or stop up a house drain, whereby he had been put to the expense of repairing it and embedding it in concrete "and has suffered other expense and inconvenience through having to conduct these operations in wet weather." In addition to *Lemmon* v. *Webb*, another English case, *Smith* v. *Giddy* [1904] 2 K.B. 448, was cited, but neither of these decided the law on roots, being cases on branches. Chapman, J., delivering a reserved judgment, said: "It is remarkable that the reports of cases decided in England in the course of several centuries have so few cases of this kind. I take it that this circumstance points to some common understanding on the subject. [It will be noted from what follows that he thought this understanding was that no action lay for damage by roots.] . . . Reverting to the subject of roots, I can find no precedent for such an action as this, but I do find Willis, J., in *Smith* v. *Giddy* [1904] 2 K.B. 448, saying: 'I have a strong feeling that it is highly desirable not to establish new causes of action where it can be avoided.' Roots are *not* like branches. They extend everywhere uncontrolled and unseen . . ." and he went on to say that he need not decide whether such an action lay or not because he found that the major damage had occurred before either party went into possession of their respective premises and hence the defendant was not liable.

In the same year in *Middleton* v. *Humphries* (1913), 47 Ir. L.T. 160 (Ch. D.), this difficult question, which merited a reserved judgment in New Zealand, was being thus summarily dismissed in Ireland by Ross, J.: "The only question which I have to decide is one of fact . . . What brought down the wall? . . . It was the growing action of the roots of the trees," and he awarded a declaration that the defendant was wrongfully permitting the roots of certain trees to grow into the plaintiff's land, an injunction, and £25 damages and costs.

At long last, in 1940, this question came before the English courts in *Butler* v. *Standard Telephones and Cables, Ltd.* [1940] 1 K.B. 399, the headnote to which reads: "*Middleton* v. *Humphries* (1913), 47 Ir. L.T. 160, approved and applied." In *Butler's* case the defendants' sports ground adjoined a row of semi-detached houses, of which the plaintiff had occupied one since 1928. In 1930–31 the defendants had planted two rows of poplars on their ground near the houses, and in 1934 the plaintiff found signs of a very severe settlement in his house. Not knowing the cause, he remedied it for the time being by underpinning the flank wall. Later excavations,

however, revealed that roots from the poplar trees had burrowed under the walls. They were cut back, but in 1937 cracks appeared in the walls and a more serious settlement of the house occurred. The plaintiff alleged that the subsidence was due to the disintegration of the clay upon which the house was built as a result of the roots penetrating it and sucking out the moisture. The statement of claim, itself an indication of the doubtful state which the law appeared to the plaintiff's advisers to be in, alleged nuisance, trespass, and wrongful interference with the plaintiff's right of support; alternatively it claimed damages for negligence and for wrongful removal of water from the soil by the trees; and it asked for an order that the trees be cut down and an injunction to prevent the continuance of injury by the roots to the plaintiff's house. The defendants contended that even if the trees were to blame, that did not give the plaintiff any known cause of action against the defendants. The case, it was argued, was totally different from one of branches. "It is extending the law a good deal further than it has ever gone to suggest that the planting of boundary trees, not being poisonous, causes liability because damage is caused by the absorption of moisture by the roots." The plaintiff's answer was that the defendant had in fact put a drain on to the plaintiff's land and that the planting of trees close to the wall of neighbouring houses was not a normal user of land. Counsel said the nearest English cases were *Lemmon* v. *Webb* and *Smith* v. *Giddy*, and cited *Middleton* v. *Humphries*. For some reason counsel for the defendants appear not to have been aware of the case of *Rose* v. *Equity Boot Co., Ltd.*, for in delivering his reserved judgment Lewis, J., said: "There is apparently no English case recorded in the books of an action being brought for nuisance resulting in damage to property by the action of the roots of a tree . . . *It would seem that the only instance . . . is an Irish case, Middleton* v. *Humphries* . . . Ross, J., had no doubt that that gave a right of action . . . That decision draws no distinction in law or in fact between damage caused by overhanging branches and damage caused by roots which burrow underground . . . It seems to me that not only is there a right for a plaintiff to cut the roots off the offending tree, but he is also entitled to recover damages if damage has been suffered."

This case thus appears to rest only upon *dicta* in *Lemmon* v. *Webb* and *Smith* v. *Giddy*, and the somewhat brusque decision of Ross, J., in *Middleton* v. *Humphries*, who seems to have thought no question of law arose at all and who pronounced judgment based upon no binding authority. It is a matter for reflection whether the English court would have reached the decision it did had the more considered views of Chapman, J., in *Rose* v. *Equity Boot Co., Ltd.*, been brought to its notice.

But be that as it may, the point was again before the court a few weeks ago in the case of *Coupar* v. *Heinrich*, which, to date, is reported only in the *Estates Gazette* for 19th March, 1949, at p. 223. The facts were similar to those in *Butler* v. *Standard Telephones, Ltd.*, and again it was poplar trees which caused the damage. Counsel cited only *Butler* v. *Standard Telephones, Ltd.*, and the case appears to have been decided on that authority alone, together with the expert evidence. The defence was that the subsidence of the house was due to war damage, or alternatively to inherent defects and weaknesses in the structure of the house, or to natural local conditions.

In giving judgment Finnemore, J., said that poplar roots absorbed water to an astonishing extent and penetrated as far as 80 feet. It was a common practice now not to plant them nearer than 100 feet from any building. He was satisfied that the damage was due to the roots and not to war damage. The case was opened by counsel for the plaintiff as one of nuisance, although the numerous grounds of action alleged in *Butler* v. *Standard Telephones, Ltd., supra*, were referred to, but Finnemore, J., in his judgment, says: "once the roots of a person's trees *trespass* on to the land of another doing damage by absorbing water from the soil and weakening the foundations of the house there is a cause of action. There is no doubt that the roots of the poplar trees which the defendant planted *did trespass* on to the plaintiff's property."

Until *Butler* v. *Standard Telephones, Ltd.*, it was not settled that any action, even in nuisance, lay for damage by roots, and in that case a *dictum* from the judgment of Kay, J., in *Lemmon* v. *Webb* was cited with approval, reading as follows: "The result of the authorities seems to be this: the encroachment of the boughs and roots over and within the land of the adjoining owner is not a trespass . . . It is a nuisance." And Clerk and Lindsell on Torts, 10th ed., at p. 21, says: "The common law has allowed an action of nuisance to develop on analogy to protection in the enjoyment of a servitude. So it has only recently been decided (*Butler* v. *Standard Telephones, Ltd.*) that the spreading of the roots of a tree constitutes a nuisance and not a trespass."

It is therefore submitted with great respect that, so far as it appears to create a new cause of action, *Coupar* v. *Heinrich* should be treated with some reserve.

G. H. C. V.

A Conveyancer's Diary

THE NATIONAL PARKS BILL—I

THE full title of this Bill, which was given an unopposed second reading in the House of Commons last week, is the "National Parks and Access to the Countryside Bill," but even its full title does not reveal all the matters with which this measure is concerned. Apart from certain administrative provisions, dealing for the most part with the powers and functions of a new statutory body to be known as the National Parks Commission, four distinct topics emerge from this Bill: the creation of national parks, nature conservation, public rights of way and access to the countryside. Except perhaps for the second—nature conservation—all these matters will be of the most direct interest to the landowner and his legal advisers, and I make no apology for writing on this subject at some length at what, to some of my readers, may appear rather an early stage. There are some parts of the Bill capable of considerable improvement from the point of view of clarity, and the greater the publicity that is given to these proposals while they still remain proposals, the more chance will there be that points of difficulty will be resolved before they pass into law.

Part II of the Bill, which deals with national parks, is a planning measure. The general scheme whereby an area will become designated as a national park is as follows. The selection of the area is the responsibility of the National Parks Commission, a body whose members will be appointed by the Minister of Town and Country Planning, and in their selection of areas for this purpose the Commission are to be guided by three factors: the area must be extensive, it must have natural beauty and it must be capable of affording recreation to the public. Once selected, the area is designated as a national park by order of the Commission, confirmed by the Minister, but before making an order it is the duty of the Commission to consult with every joint planning board, county council, county borough council and county district council whose area includes any land in the area to be designated as a national park.

Detailed provisions for the making of the various types of orders authorised by this Bill are to be found in Sched. I. As applied to orders designating national parks the sequence of events will be as follows: the Commission, before submitting the order for confirmation to the Minister, must give notice of it in the usual way by advertisement in the *London Gazette* and the local Press and state the time within which objections to the proposals may be made. If any objections are persisted in the Minister is under an obligation to hold a local inquiry before confirming the order. If the

Minister wishes to vary an order designating a national park, he may do so by order, and in that case it becomes his duty to advertise the proposed order, and the provisions already referred to regarding objections and the holding of an inquiry will then apply, *mutatis mutandis*, to the Minister's order varying a previous order.

This provision, coupled with the power of the Minister to give directions to the National Parks Commission, with which the Commission are bound to comply, and the constitution of the Commission as the nominees of the Minister, in effect gives the Minister almost absolute powers with regard to the designations of areas as national parks. The only provisions made for consulting local interests are those already referred to making it obligatory upon the Commission to consult local authorities before designating an area as a park, and a similar obligation upon the Minister to consult the same list of authorities before making an order varying an existing order. When examined carefully these provisions do not bear out the case made by some critics, that the part of this Bill dealing with national parks leaves too much to local initiative and too little to central direction. This criticism may have some force as far as the administration of national park areas is concerned: as regards the creation of parks it is obvious that a strong-minded Minister will always be able to have his own way. It is doubtless true that the number of national parks which can be designated in England and Wales is limited, and once these parks have been created the extent of the Minister's powers under this particular head will cease to be a matter of any interest to anybody; but in addition to the powers already mentioned, cl. 70 of the Bill authorises the Commission to designate an area, not being a national park, which appears to them to be of outstanding natural beauty but, by reason of its small extent, not suitable for designation as a national park, as an "area of outstanding natural beauty"; and thereupon certain of the provisions applicable to national parks will apply to that particular area. In this way it is clear that the Minister, through his nominated Commission, will be able to make his influence felt throughout the country, as one beauty spot after another becomes designated and consequently, as will be seen, subjected to special treatment for planning purposes.

As regards areas designated as national parks the planning arrangements of this Bill contemplate the setting up of a planning authority exclusively, or almost exclusively, concerned with the designated area. The details, which are contained in cl. 7, are complicated, but in summarised form they can be said to provide for a joint planning board where the area of the park lies within the areas of more than one local planning authority, and a separate planning committee or sub-committee of the authority concerned where it lies wholly within the area of one local planning authority. The interest in these provisions lies in the fact that a proportion of the members of these special boards, committees or sub-committees, being not less than a quarter, are to be persons appointed in accordance with certain specified requirements and nominated by the Minister.

The actual planning provisions regarding national parks and areas of outstanding natural beauty in this Bill are very short. They are contained in cl. 8, which provides (in sub-cl. (1)) that in preparing a development plan or any alterations in or additions to a development plan for any area including a national park (or an area of outstanding national beauty) the local planning authority shall consult with, and take into consideration the views of, the Commission.

On the face of it this provision appears innocuous enough, but it should be recalled that under the Town and Country Planning Act, 1947, the Minister has very wide powers of moulding a development plan submitted to him by a local planning authority to a pattern of his own choosing (see, for example, s. 6 (2) of that Act). The combined effect of the Minister's powers under that Act and the constitution of the National Parks Commission under this Bill raises the suspicion that if the Commission's observations are disregarded by the local planning authority (whose statutory duty is confined to taking these observations "into consideration") they will very likely prevail in the end when the development plan of the authority in question comes to be considered by the Minister. And if that suspicion is well founded, very little remains of the local planning authority's ostensible authority to plan the development of its own area, whether that area is an area wholly or almost wholly consisting of national park lands, or an ordinary area with here and there a pocket designated as "an area of outstanding natural beauty."

"A B C"

Landlord and Tenant Notebook

USE AND STATUS

THE number of statutes which confer special rights on parties to tenancies of special properties has increased of late years. In some cases, actual use decides whether or not the legislation applies: e.g., Pt. I of the Landlord and Tenant Act, 1927, affects "premises held under a lease . . . used wholly or partly for carrying on thereat any trade or business and not being agricultural holdings within the meaning of the Agricultural Holdings Act, 1923" (s. 17 (1)); the successor of the last-mentioned statute, the Agricultural Holdings Act, 1948, is concerned with what it calls the aggregate of the agricultural land comprised in a contract of tenancy (s. 1 (1)) and defines "contract of tenancy" as a letting of land, etc. (s. 94 (1)), without reference to any stipulations in such contract. On the other hand, the Housing Act, 1936, speaks blithely of "any contract for letting for human habitation a house . . ." (s. 1 (1)); and, while this does not appear to have occasioned litigation so far, the same cannot be said of the expression "house or part of a house let as a separate dwelling" to be found in the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. The latest addition to the collection of authorities on what that means is *Wolfe* v. *Hogan* [1949] 1 All E.R. 570 (C.A.).

In the early days of rent control, the question whether the type of property described by estate agents as "combined," i.e., business premises plus living accommodation, was within the Acts was the subject of conflicting views. There were some who held that it was, in any event; some thought it never could be; and the idea of a "dominant user test" found much support (McCardie, J., being strongly in favour of this approach). However, *Epsom Grand Stand Association, Ltd.* v. *Clarke* (1919), 35 T.L.R. 525 (C.A.), disposed of the whole point by deciding that the extent to which residence figured did not matter, and thus saved county court judges at least some headaches; and before the House of Lords could consider the matter judicially proviso (ii) to s. 12 (2) of the Increase of Rent, etc., Restrictions Act, 1920, declared that the application of the Act to a house or part of a house should not be excluded by reason only that part of the premises was used as a shop or office or for business, trade or professional purposes.

This, however, did not completely solve the problem of what is meant by "let *as* a separate dwelling." The question was touched upon in the *Epsom* case, which concerned licensed premises with an on-licence (such have since been excluded from control: Rent, etc., Restrictions Amendment Act, 1933, s. 1 (3)), part of which were occupied by the licensee and his family. For, in the course of his judgment, Bankes, L.J., said: "If an agreement were to let premises as a barn, the tenant, even though he lived there, could not be heard to say that they were let as a dwelling-house." This *dictum*, and one by Salter, J., in *Gidden* v. *Mills* [1925] 2 K.B. 713, at p. 722, were criticised and disapproved respectively in the recent case. The subject-matter of *Gidden* v. *Mills* was described in the agreement as a piece of ground with the coach house

and stable erected thereon, but rooms above the structure specified had been used as living accommodation by a coachman. In 1922 the defendant turned these into what is now called a "mews flat," which he sub-let. It was held that the landlord could recover the garage but not the flat. And in the course of his judgment Salter, J., said: "Where premises are let to a tenant on such terms that he is free to use them as a dwelling-house or not, as he pleases, it is impossible to say from the terms of the tenancy whether the premises are 'let as a dwelling' or not. In such a case regard must be had to the user which is being made of the premises by the tenant or sub-tenant *then in occupation* at the time when possession is sought to be obtained. If they are being used as a dwelling they are 'let' as a dwelling . . . It must, I think, be added by way of qualification that the user as a dwelling must not be a breach of any contract on which the plaintiff is entitled to rely. A tenant cannot deprive his landlord of his common-law rights by breaking the contract of tenancy."

It is worth while setting out the facts of *Wolfe* v. *Hogan*, as set out in the headnote and stated in both judgments delivered, fairly fully. In August, 1939, the lessee of an "ordinary" house in Chelsea, who was an antique dealer by profession carrying on business elsewhere, used a large ground floor room, divided into two by folding doors, as a storage place for some of his stock-in-trade. The defendant, who lived in a flat in the neighbourhood, approached him and asked him whether he would let her "the shop." Negotiations proceeded, the county court judge found, on the footing that she was taking the composite room to use it as an antique shop, and if she had told the lessee that she contemplated using the premises (which I take it means the composite room and a small room further back which was ultimately included) as a dwelling, he would have refused to let them to her. There was no water laid on and no sanitary convenience, but the lessee did arrange with tenants upstairs that she should have the joint use of their lavatory and bathroom on the half-landing.

It was when air raids began that the defendant asked whether she might sleep on the premises and that the then landlord assented, in view of the difficulty she might have in getting home in such conditions.

In 1942 the head lease expired and the superior landlord, plaintiff in the action, in effect continued the letting on the same terms. But from the first (this appears in Denning, L.J.'s judgment only) he protested against her using the premises as a dwelling.

By 1947, when notice to quit was given, the defendant was for all practical purposes permanently resident in the back part of the large room.

The county court judge decided in the plaintiff's favour on the basis of an implied covenant against using the premises otherwise than as a shop. Evershed, L.J., disagreed with this view, but held that the user contemplated by the landlord and by (whatever may have been in the tenant's mind) the language used was user as a shop and not as a dwelling-house. And if premises were a separate dwelling, then before s. 12 (2) of the 1920 Act applied it must be shown that the two parties had let and taken them as a separate dwelling. If the terms of the letting showed a contemplation of user as a shop, the subsection did not apply.

The above may be said to concentrate on the meaning of the word "as" in the expression "let as." But the fact that user had changed, the landlord accepting rent after the change, called for some examination of what was meant by the 50 per cent. longer word "let." Much the same point arose as was, in fact, gone into in quite a different proceeding, *Stray* v. *Docker* [1944] K.B. 351, which decided that "lets" in the "extortionate rent" provisions of s. 10, "where any person . . . lets any dwelling-house . . . at a rent which," etc., created a continuous offence, so that the receiving of the rent reserved more than six months after the letting (by someone else) did not bar a prosecution. One might put it in this way: "Let" does not necessarily mean make a grant, as, say, in the case of the words of demise, "The landlord lets and the tenant takes." It may mean, in effect, "is entitled to the reversion."

It was, accordingly, necessary to examine the consequence of the changed user in so far as the plaintiff had been aware of what was going on. The position was stated tersely by Evershed, L.J.: "Again I wish to make it quite plain that I am saying nothing which should be taken as indicating that, if a tenant does change the user and creates a dwelling-house out of what was formerly a shop, and if that fact is fully known to *and accepted* by the other party to the contract (whether or not there be a prohibition), the result may not well be that there will then be inferred a contract to let as a dwelling-house, although it may be a different contract in essentials from the contract which was originally made and expressed . . . That does not arise here." As regards the facts, incidentally, Evershed, L.J., regarded the case as one of insufficient knowledge, a view which does not accord with Denning, L.J.'s above-mentioned reference to letters of protest. The latter, when dealing with the change, applied the principles governing waiver of forfeiture.

One would have expected some reference to have been made to *Williams* v. *Perry* [1924] 1 K.B. 936, in which on the occasion of a verbal letting of "combined premises" the intending tenant said that he wanted the shop for his business and the upper rooms as storerooms and workrooms and not as a dwelling as he had a house of his own elsewhere. It was held that his subsequent moving into residence did not confer protection, being in breach of his "bargain."

However, Salter, J.'s *dictum* in *Gidden* v. *Mills* was disapproved as incomplete, in that it did not allow for the possibility of contemplation apart from restrictions expressed in a tenancy agreement or that of change; and that of Bankes, L.J., in the *Epsom* case was criticised in that it made no allowance for the latter. It may be convenient to attempt to summarise the resultant position in a series of propositions, viz.: Premises are let as a dwelling-house if—

(1) used as a dwelling-house and either

(2) such user is consistent with the terms of the grant and the circumstances of the grant in so far as those circumstances, including what was said during negotiation, what was known about living accommodation occupied by or available to the tenant, and the nature and structure of the premises demised, do not warrant the inference that such user was not contemplated; or

(3) such restriction as existed has ceased to operate as the result of agreement, either (*a*) express, or (*b*) implied; in the latter case, mere knowledge is not enough to create the implication.

R. B.

OBITUARY

MR. N. DIXON

Mr. Norman Dixon, solicitor, of Hull and Withernsea, died on 30th March. He was admitted in 1910.

MR. I. FÜRST

Mr. Isaac Fürst, J.P., solicitor, of Edinburgh, died recently.

MR. E. J. McCANDLISH

Mr. E. J. McCandlish, Joint Law Agent to the Church of Scotland, and solicitor of Edinburgh, died on 30th March, aged 81.

MR. J. I. MOFFAT

Mr. John Irving Moffat, solicitor, of Irvine, Scotland, died recently.

MR. R. McDONALD

Mr. Reginald McDonald, formerly solicitor of Plymouth, and clerk to Plymouth Justices from 1937 to 1947, died on 1st April.

MR. A. F. MOTT

Mr. Alfred Fenwick Mott, solicitor, of Gray's Inn, W.C.1, died on 1st April, aged 87. He was admitted in 1886.

MR. E. J. B. THOMAS

Mr. E. J. B. Thomas, managing clerk with the firm of Glyde, Kerslake & Co., solicitors, of Portishead, Bristol, died on 21st March, aged 72. Mr. Thomas had been connected with legal circles in Bristol for fifty-four years.

HERE AND THERE

ASKING FOR SILK

EASTER approaches and speculation grows as to the forthcoming hatching out of the new full-bottomed wigs still under the protective covering of the Lord Chancellor's wings. Which little beaks will break through the shells into a new world of opportunity? As to the form of application, "The Barrister," by Sir Harold Morris, K.C., published now nigh on twenty years ago, seems to have had the accidental effect of almost standardising what was once an individual effort of literary skill and personal ingenuity. At pp. 150–151 he set out the terms of his own letter, and though he was careful to append a warning that it was not an official form though it worked satisfactorily in his case, aspiring leaders who, in their first steps, seem to prefer to follow the kindly light of a precedent when they can find one, have ever since been treading pretty freely in his footprints. One who had occasion to consult the oracle not long ago in one of the libraries found that the book fell open of its own accord at the required page. One sentence, it seems, occasionally sticks in the throat of the applicants: "I enclose a statement of my pretensions," a slightly archaic form of expression, rendered perhaps somewhat less than reassuring by memories of those Pretenders, old and young, in the history books, while even the dictionary meaning of "right alleged or assumed" scarcely sounds a note of invincible confidence in one's approach. "The statement of pretensions," says the oracle "should set out the date of birth, details of education, date of call to the Bar and particulars of practice."

FLEET STREET DOINGS

RECENT events have administered a fair number of shocks to the nervous system of Fleet Street, and it may be that there are more to come. To date, the latest jar has been a question in the Commons as to whether the contempt proceedings against the *Daily Mirror* were "borne by another newspaper," to which the Attorney-General replied: "I understand that to be a fact but my department is not directly concerned with it." Now, dog does not eat dog and the Street of Ink has established conventions on the point. Thus, once upon a time, when the editor of one of the great dailies got himself involved in a "drunk in charge" case mixed up with assault his loyal colleagues with parade-ground discipline saw, heard and printed no evil, only one succumbing to the temptation to break ranks and spread the story. As a matter of fact, in this case, there is doubtless no more to it than the usual spontaneous benevolence which so often spurs a great newspaper to proffer material aid to a distressed and deservingly newsworthy criminal, and the "contempt" proceedings were clearly initiated at the instance of the legal advisers of the accused in the general conduct of his defence.

FULL CRY

To the thoughtful student of the Press, however, divers puzzling reflections must have been suggested while the thunders of the King's Bench rolled about the head of the indiscreet editor. For the best part of a week after the Haigh story "broke" it seemed as if a great part of the Press (and not one paper only) had thrown their caps over the windmill, legal advisers or no legal advisers; "previous convictions," hypothetical "victims" categorically enumerated, reported "confessions" became common property served up with the thrills of exquisite horror. Where did they all come from? To those members of the legal profession who daily attend the newspaper offices for the elimination of deleterious matter, the all but universal practice of publishing photographs of accused persons driving away from court has long been a matter of anxiety (especially where identity might be in issue), though so far the distressing possibilities they have envisaged have never materialised. But here was a field day of unprecedented magnitude, and when something was done about it, and rightly done, it was apparently nobody's business but the accused's. The fall of the law's thunderbolt has thus been somewhat unpredictable, but, like the old Roman military practice of decimation, it will doubtless prove effective and deterrent in the future *pour décourager les autres*. Or put it another way, *Hodie tibi, cras mihi*.

RICHARD ROE.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

"Death Duties—Hunters and Hunted"

Sir,—I have been reading with the very greatest interest the excellent articles "The hunters and the hunted." They contain most valuable information, and would be very useful for reference if they could be reprinted in pamphlet form. It is not convenient always to have either a bound volume of THE SOLICITORS' JOURNAL, or loose numbers, but if these articles could be reprinted as a pamphlet, I am sure it would be a great boon to members of the legal profession and others. Is there any chance of this? INCE & CO.

London, E.C.3.

[This suggestion is under consideration and the views of readers will be welcomed.—ED.]

BOOKS RECEIVED

The Indian Law Review. Vol. 2, Nos. 3 and 4. 1948. Calcutta: The Indian Law Publications, Ltd.

Oyez Practice Notes, No. 13: Notes on Chancery Practice. By F. G. R. JORDAN. 1949. pp. 87. London: The Solicitors' Law Stationery Society, Ltd. 6s. net.

BOOK REVIEWS

The Export Trade. A Manual of Law and Practice. By CLIVE M. SCHMITTHOFF, LL.M., LL.D., of Gray's Inn, Barrister-at-Law. 1948. London: Stevens & Sons, Ltd. 17s. 6d. net.

The law seems to be neatly pigeon-holed in the minds of text-book writers in a manner that has tended to become stereotyped, and it is refreshing to come across an author with the necessary vision to cut across the usual encyclopædic classification of legal subjects. None will question, moreover, the topical importance in modern business, and therefore in modern law, of the theme which Dr. Schmitthoff has chosen for this experiment. The book is declared by its author to be written for lawyers and laymen alike. It describes for the latter the elements of the appropriate legal institutions, such as the law of contract, of insurance and of carriage by sea and air, before treating of their special functions in the export trade. Conversely, it presents to the lawyer a first-rate account of mercantile practice based largely on custom. There is guidance both for the expert and for the newcomer to the business of exporting with many a sound word of advice, as, for instance, on the importance of accurate invoicing (p. 38), and in the chapter on arbitration and litigation. The common terms of sale and parties' duties thereunder are discussed fully, and the chapters on exchange control and export licences appear to be especially valuable. An unusual feature is a table of useful addresses.

Some will perhaps quarrel with the loose expression "undisclosed agent" on p. 2, but the author's meaning is fully explained on p. 85. For our part, admitting the exigencies of compression, we should have liked to see a warning on p. 37, in the sentence on part performance as an alternative to proof of contract by memorandum, of the limitations on the use of this expedient, such as the requirement that such performance must be exclusively referable to the contract sought to be enforced.

But these suggestions are not intended to disparage an admirable piece of literary pioneering.

Criminal Justice Act, 1948. By His Hon. Judge TUDOR REES, D.L., J.P., Chairman of the Surrey Quarter Sessions and the Epsom Petty Sessions, and E. GRAHAM, M.A. (Oxon), of the Inner Temple, Barrister-at-Law, Deputy Clerk of the Peace, Surrey. 1949. London: Butterworth & Co. (Publishers), Ltd. 9s. 6d. net.

This little book of 127 pages sets out in simple terms the objects which Parliament hopes to attain in passing the Criminal Justice Act, 1948, and the manner in which that Act has amended and added to the previously existing law.

The authors have dealt with the Act as a whole, without differentiating between those parts of it which have already been brought into effect, and those which will only operate *in futuro*. The subject is dealt with in narrative form, non-technical language being used throughout, with the result that a complex Act of Parliament is presented to the reader in a simple and interesting manner.

The book is written mainly for the benefit of lay justices and probation officers, but it will also be of assistance and interest to police officers, and to students and solicitors who wish to acquire a working knowledge of the main changes brought about by the new Act without going too deeply into the technical niceties of its provisions.

NOTES OF CASES

HOUSE OF LORDS

COLLISION AT SEA: CONSTRUCTION OF RULES

The *Queen Mary*

Lord Porter, Lord Merriman, Lord du Parcq, Lord Normand and Lord MacDermott. 8th February, 1949

Appeal from the Court of Appeal.

In 1942 the steamship *Queen Mary*, while carrying 10,000 troops across the Atlantic, collided with H.M.S. *Curacoa*, the cruiser which was escorting her. Pilcher, J., found the *Curacoa* alone to blame. The Court of Appeal held the *Curacoa* two-thirds to blame and the *Queen Mary* one-third to blame. The *Queen Mary's* owners now appealed, and the Admiralty cross-appealed. By r. 21 of the Rules for Preventing Collisions at Sea, 1910, instructions corresponding with which are issued to the Royal Navy, " Where by any of these rules one of two vessels is to keep out of the way, the other shall keep her course and speed . . ." By r. 24, " . . . every vessel, overtaking any other, shall keep out of the way of the overtaken vessel . . ." By r. 27, " In obeying and construing these rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger . . ." By r. 29, " Nothing in these rules shall exclude any vessel . . . from the consequences of . . . the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case." The House took time for consideration.

LORD PORTER said that the question was whether rr. 21 and 24 or rr. 27 and 29 were to prevail. The *Queen Mary* contended not that the case was explicitly covered by any of the rules but that one or other of the ships must give way and that, where no specific order had been given which it should be, the natural inference was that it should be the escort; that certainty as to the course to be pursued was of the first importance to navigating officers; and that the *Queen Mary*, in acting as she did, was only obeying the orders given in New York. Whatever were the true view, the overtaking rule did not apply in reverse: there was nothing from which to infer so drastic a change as to require the *Queen Mary* to keep her course and speed. But apart from any regulations or instructions, the practice that in the case of a multiple convoy the escorting vessel should give way to the ships she was escorting had been recognised constantly and without exception. The assessors who assisted the House confirmed the practice, though to the further question whether it applied to the escort of a single ship by a single ship they had replied that they had no experience of such a case and were unable to answer the question. As a matter of good seamanship it was the primary duty of the *Curacoa* to keep out of the way of the *Queen Mary*, but that did not mean that the *Queen Mary* was the stand-on ship: each ship must take appropriate action when danger of a collision arose in her case, and was guilty of some negligence if she failed to do so. No special instructions had been given at that time as to the navigation of ships in convoy in case of danger of collision. That left it to the master of such a vessel to act as a seaman should. His lordship gave his reasons for holding both ships to blame, and said that appeal and cross-appeal failed.

The other noble and learned lords agreed that the appeal should be dismissed.

APPEARANCES: *Hayward*, K.C., *Porges* and *H. Browning* (*Hill, Dickinson & Co.*); *Carpmael*, K.C., *Naisby*, K.C., and *Rena* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

LIMITATION: CONCEALMENT OF CAUSE OF ACTION

Beaman *v.* A.R.T.S., Ltd.

Lord Greene, M.R., Somervell and Cohen, L.JJ. 14th February, 1949

Appeal from Denning, J. (64 T.L.R. 285.)

In 1935 the plaintiff deposited with the defendants packages to be held in store by them until she asked them to send them to her abroad. In 1940 she went from the Mediterranean where she had been living and where the packages could not be sent to her, to India, remaining there until the end of the war. The defendant company was controlled by Italians, and its business vested in the Custodian of Enemy Property. As continued keeping of the goods was becoming difficult in 1940 with shortage of staff, bombing and the danger of invasion, the company's managing clerk opened the packages, found, so he said, that the contents were worthless, and authorised their being given to the Salvation Army. In 1946 the plaintiff demanded the return of her chattels, and brought this action for damages for the conversion of her property which she valued at 3,544*l*, including certain jewellery. The defendants pleaded s. 3 of the Limitation Act, 1939, because more than six years had elapsed since the original conversion. The plaintiff contended that the conversion was in law fraudulent and that the limitation period was therefore postponed by s. 26. Denning, J., dismissed the action. The plaintiff appealed. By s. 26 of the Act of 1939, " Where, in the case of an action for which a period of limitation is prescribed by this Act, either—(*a*) the action is based on fraud of the defendant or his agent . . . or (*b*) the right of action is concealed by the fraud of any such person as aforesaid . . . the period of limitation shall not begin to run until the plaintiff has discovered the fraud . . . or could with reasonable diligence have discovered it."

LORD GREENE, M.R.—SOMERVELL and COHEN, L.JJ., agreeing—said that in his opinion the action was not " based on fraud " within the meaning of s. 26 (*a*). Fraudulent concealment of a cause of action need not be subsequent to the act which gave rise to the cause of action: the concealment might acquire its fraudulent character from the manner in which the act of conversion was done. It was not right to confine the expression " fraudulent concealment " to fraud which in its nature was sufficient to give rise to a cause of action, for that would exclude the wide range of conduct which before the statute was regarded as dishonest so as to prevent time from running (see *Bulli Coal Mining Co.* v. *Osborne* [1899] A.C. 351). The defendants had, in breach of their duty as bailees, got rid of the plaintiff's goods without making the slightest attempt to communicate with her even after the Mediterranean was opened in 1943 on the surrender of Italy. The conduct of the defendants, by the very manner in which they converted the plaintiff's chattels in breach of the confidence reposed in them and in circumstances calculated to keep her in ignorance of the wrong which they had committed, amounted to a fraudulent concealment of the cause of action. The action was accordingly not barred. Appeal allowed.

APPEARANCES: *P. M. O'Connor* and *N. MacDermot* (*Murray, Napier & Co.*); *Aiken Watson*, K.C., and *H. J. Baxter* (*Crawley and de Reya*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

WORKMEN'S COMPENSATION: PRELIMINARY OBJECTION TO APPEAL

Gray *v.* Cape Asbestos, Ltd. (No. 1)

Bucknill, Evershed and Denning, L.JJ. 16th February, 1949

Appeal from Croom-Johnson, J.

The appellant, a workman who had suffered an accident, brought an action against the respondents, his employers, alleging negligence and breach of statutory duty. Croom-Johnson, J., gave judgment for the employers, whereupon the workman applied under s. 29 (2) of the Workmen's Compensation Act, 1925, to him to assess workman's compensation. The judge refused to do so, because, he held, the accident had not arisen out of or in the course of the workman's employment. On the workman's appeal against both decisions, the employers now raised the preliminary objection that the appeal did not lie because the workman had availed himself of the right to apply for workmen's compensation. Section 29 (1) of the Act allows a workman, where his injury was caused by the employer's default, to proceed against him either by action or under the Act, but the employer cannot be made to pay compensation both under and independently of the Act. By s. 29 (2) where in a workman's action against the employer it is held that the latter is not liable but that he would be liable for compensation under the Act, the court, on the workman's application, shall assess the workman's compensation.

BUCKNILL, L.J.—EVERSHED and DENNING, L.JJ., agreeing—said that s. 29 (2) was not applicable to the case, and the workman had not debarred himself from appealing. As Croom-Johnson, J., had held that the accident did not arise out of or in the course of the employment, no assessment of compensation could be made by him. It was not the mere application for an assessment of the workman's compensation but the actual making of such an assessment that was fatal to further proceedings independently of the Act. That was clear from *Kennedy* v. *Walker* [1944] 1 K.B. 225, which was distinguishable on the ground that the workman there had obtained an assessment of compensation in the county court. Preliminary objection overruled.

APPEARANCES: *P. M. O'Connor* (*Hewitt, Woollacott and Chown*); *Beney*, K.C., and *Jukes* (*Davies, Arnold & Cooper*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TROOPSHIP IN COLLISION: APPLICABILITY OF REGULATIONS: POSITION OF ESCORT OFFICER

The *Sobieski*

Bucknill, Cohen and Singleton, L.JJ.
31st January and 7th March, 1949

Appeals from Pilcher, J. [1947] W.N. 314.

In April, 1945, a collision occurred between the steamship *Esperance* and the steamship *Sobieski*, a troop-carrier and the commodore ship of a fast two-ship convoy, escorted by five naval craft commanded by a naval officer. Pilcher, J., held that the collision was due solely to the negligence of that officer in failing to pass on certain information. All three parties appealed, each ship contending that the other was to blame.

BUCKNILL, L.J.—COHEN and SINGLETON, L.JJ. agreeing—referred to *The Vernon City* [1942] P.9 at p. 61, and said that he could not agree with Pilcher, J., that it was common ground that the *Sobieski*, being engaged upon a troop-carrying operation under Admiralty orders, was not bound to obey the Collision Regulations as such. He could not find authority for such a wide proposition in any of the decided cases. On the facts, his conclusion was that the proper proportion of blame would be three-fifths in respect of the *Sobieski* and two-fifths in respect of the *Esperance*. With regard to the question of negligence on the part of the escort officer, in the circumstances the officer had a duty to those in charge of the *Sobieski* to exercise reasonable care in the performance of the task which he had undertaken and, therefore, to inform the master of any unexpected dangers to his ship which he could detect by the radar but of which the master of the *Sobieski*, which lacked radar, remained ignorant in the fog. The escort officer was, therefore, guilty of contributory negligence and liable at common law.

After argument the court held on 7th March, 1949, that the escort officer was not liable under ss. 1 (1) and 9 (4) of the Maritime Conventions Act, 1911. Those sections were not applicable because the officer was not in command of the ship on which he was stationed and was in no way responsible for its navigation. It was immaterial to liability under those sections that the officer was liable at common law. Judgment of Pilcher, J., varied.

APPEARANCES: *Carpmael*, K.C., *Naisby*, K.C., and *Hewson* (*Treasury Solicitor*) (for the escort officer); *Porges* and *Vere Hunt* (*Constant & Constant*) (The *Sobieski*); *Hayward*, K.C., and *P. Bucknill* (*Waltons & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PEGS FOR FACTORY WORKERS' CLOTHES: "SUITABLE" ACCOMMODATION

McCarthy and Another *v.* Daily Mirror Newspapers, Ltd.

Tucker, Asquith and Singleton, L.JJ. 31st March, 1949

Appeal from Clerkenwell County Court.

The plaintiffs were printer's assistants employed by the defendants. For the purposes of their work they had to take off their outer clothing and don overalls. They hung the discarded clothing on pegs outside the room in which they worked because there were not enough lockers for all the employees. Their clothing having been stolen, they brought an action against the employers for breach of their duty under s. 43 (1) of the Factories Act, 1937, to provide "adequate and suitable accommodation for clothing not worn during working hours." The county court judge dismissed the action, and the plaintiffs now appealed.

TUCKER, L.J.—ASQUITH and SINGLETON, L.JJ., agreeing—said that the question was what the words "adequate and suitable accommodation" meant, and, in particular, whether the word "suitable" contemplated the element of risk to the clothing, including the risk of its theft, or whether the risk of theft was irrelevant to suitability of accommodation. The county court judge had regarded the risk of theft, at any rate theft internally in the building, as a matter quite outside the purview of s. 43 (1), and as one to which it was accordingly not necessary for him to apply his mind. That had been the basis of his decision in the employers' favour on the question of statutory duty. He therefore did not consider the question of the suitability of the accommodation having regard to the risk of theft. In his (his lordship's) opinion, the risk of theft was an element which should be taken into consideration in deciding whether accommodation was "suitable" within the meaning of s. 43 (1). It was said that the matter was one of great importance to employers of labour, who would need to know whether they must always provide lockers, and, if so, whether they must have them fitted with Yale locks. It was impossible, and would be undesirable, to attempt to give any ruling on a matter of that kind. That was essentially a question of fact to be considered in a common-sense way, taking a broad view of all the circumstances. The case must go back to the county court judge for him to decide on the suitability or otherwise of the accommodation provided by the defendant employers having regard to the danger of theft. Appeal allowed. Case remitted.

APPEARANCES: *Scott Cairns*, K.C., and *J. G. K. Sheldon* (*Shaen, Roscoe & Co.*); *Paull*, K.C., and *Edgar Bradley* (*Godden, Holme & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

CHARTERPARTY: DELAY IN UNLOADING

Steamship Induna Co., Ltd. *v.* British Phosphate Commissioners

Sellers, J. 14th February, 1949

Special Case Stated by an arbitrator.

By a charterparty dated 4th April, 1946, the respondent commissioners chartered a vessel from the claimant shipowners to load a cargo of phosphates at Bona to be delivered at certain New Zealand ports at the rate of 1,500 tons a working day of twenty-four consecutive hours. When that contract was made, there was, unknown to both parties, a law in force in New Zealand prohibiting the discharge of vessels between 9 p.m. and 8 a.m., so that it was impossible to unload the ship at 1,500 tons a day. The shipowners claimed demurrage from the charterers in respect of the delay in discharging the cargo. The charterers relied on an exceptions clause excusing them from payment for delay due to certain specified causes or "to any other cause beyond the charterers' control." The shipowners contended that the exceptions clause only covered a cause beyond the control of the charterers which came into existence after the voyage had begun. (*Cur. adv. vult.*)

SELLERS, J., said that the observations made in *Ciampa* v. *British India Steam Navigation Co., Ltd.* [1915] 2 K.B. 774, and *France, Fenwick & Co.* v. *Spackman & Sons* (1912), 18 Com. Cas. 52, were referable to the particular facts of those cases. The intention of the parties here that the lay days were not to count when delay in discharge arose by reason of a cause beyond the charterers' control, was clearly expressed. If both parties, or one, knew, at the time of making the contract, of existing circumstances which would occasion delay, other considerations would arise; but, where, as here, neither party knew, he saw no reason why effect should not be given to what the parties had clearly provided in their contract. In recent years regulations had come into operation in this country restricting and regulating trade over wide spheres of industry and often with but little publicity. It would restrict the incidence of exceptions to a very great extent, and defeat the obvious intention of the parties if exceptions could be rendered ineffective by establishing that, unknown to the parties, the circumstances relied on existed a day or two, or even an hour or two, before the contract was entered into. In his opinion, the charterers were right and the lay days did not count during the period when night work was not performed by reason of the prohibition. The charterers were accordingly not liable for any demurrage.

APPEARANCES: *Mocatta* and *Ellenbogen* (*Holman, Fenwick and Willan*); *E. W. Roskill* (*Middleton, Lewis & Clarke*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

HUSBAND'S AMERICAN DECREE: WIFE'S PETITION IN ENGLAND

Boettcher *v.* Boettcher

Wallington, J. 7th February, 1949

Wife's undefended petition for divorce.

The wife alleged, and Wallington, J., found, that the husband had been guilty of cruelty to her. On 10th May, 1946, the court in Indiana, U.S.A., granted the husband a decree dissolving his marriage to the wife, which had taken place in England. By Indianan law service on a defendant outside the jurisdiction may be effected by advertisement in a local newspaper, a copy of which is posted to the defendant by the clerk of the court. The Indianan decree recited that that procedure had duly been observed. The wife in fact never received notice, and she first learnt of the Indianan decree in December, 1947, after she had made certain inquiries as to maintenance. As she was uncertain of the validity in England of an Indianan decree obtained in those circumstances, she, in March, 1948, filed in England this petition for divorce under the Matrimonial Causes (War Marriages) Act, 1944.

WALLINGTON, J., said that the requirements of the Indianan court as to service were so similar to English practice that they could not be said to be contrary to natural justice. It was immaterial that in the present case the notice had miscarried. Proof of service in accordance with the requirements of the Indianan court had been given and accepted at the Indianan proceedings. The Indianan decree was therefore binding on the court in England. By the Indianan decree the husband was forbidden to marry again for two years, that was, until 10th May, 1948. This had in English law the effect of making the marriage subsist until that date: *Warter* v. *Warter* (1890), 15 P.D. 152, and *Le Mesurier* v. *Le Mesurier* (1929), 46 T.L.R. 203. That date was subsequent to the filing of the wife's petition, but the material date was that on which her petition was heard. The hearing had not begun until after 10th May, 1948, when the dissolution of the marriage by virtue of the Indianan decree of divorce became final and the marriage ceased to exist. The present petition must therefore be dismissed. Petition dismissed.

APPEARANCES: *J. E. S. Simon* (*C. T. Reeve* with him) (*C. W. Davenport, Law Society Services Divorce Department*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CRUELTY: REFUSAL OF INTERCOURSE

Walsham *v.* Walsham

Wallington, J. 8th February, 1949

Wife's petition for divorce on the ground of cruelty.

The wife made the following allegations in her petition: "The husband habitually and wilfully refused to have complete sexual intercourse with the wife; further, save at long and infrequent intervals, the husband wilfully refused to have any sexual intercourse at all with the wife; whereby to his knowledge and as a result of his conduct aforesaid the wife has been sexually frustrated and has suffered mental anguish and distress." The husband by his answer denied the allegations of cruelty but did not deny the evidence given by the wife at the hearing.

WALLINGTON, J., said that the cruelty alleged had been limited to conduct by the husband consistent only with a determination not to give his wife those sexual rights to which she as his wife deemed herself entitled. The result over the years had been seriously to affect her nervous condition. Whatever the reason for the husband's reluctance and restraint in sexual matters, the wife had been deprived of that normal intercourse which would have given her the sustenance of normal health and happiness. That did not mean that her whole well-being depended on the sexual relationship. Although some women were so constituted that their health was not affected by partial sexual intercourse such as *coitus interruptus*, other women entered marriage hoping to fulfil the main function of matrimony, namely, the procreation of children; and when such women were denied procreation their health was likely to be affected. The present case was of that second category. The evidence established that the husband knew that his conduct was having a highly prejudicial effect on his wife's health and happiness. Yet he had been determined not to alter it. The husband's conduct came within the accepted definition of cruelty. Decree *nisi*.

APPEARANCES: *F. H. Lawton* (*C. Grobel, Son & Co.*); *Stephen Murray* (*Harold Miller & Fraser*, for *Weigall & Inch*, Margate).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 29th March:—

Consolidated Fund (No. 1)

Public Works (Festival of Britain)

Tenancy of Shops (Scotland)

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Agriculture (Miscellaneous Provisions) Bill [H.C.] [30th March.

Army and Air Force (Annual) Bill [H.C.] [30th March.

Coal Industry Bill [H.C.] [29th March.

Read Second Time:—

Patents and Designs Bill [H.L.] [29th March.

Read Third Time:—

Water (Scotland) Bill [H.C.] [31st March.

B. DEBATES

On the Second Reading of the Patents and Designs Bill, LORD LUCAS said the Bill was designed to give effect to certain of the recommendations of the Second Interim Report and the Final Report of the Swan Committee, and to make other changes in patent law. No radical change was to be made in the fundamental principles of the present patent system. The provisions of the Bill could be divided into five groups. The first group made it possible for a person or persons to whom the inventor had assigned the rights of his invention to apply for a patent. The inventor's name would have to be disclosed in the application, but he need not be made a party to it. In future the date of the patent would be the date on which the completed specification was filed, from which date the sixteen-year period would run. It would now be possible to oppose the grant of a patent on new grounds set out in cl. 6.

The second group of provisions enlarged the grounds on which an application could be made to the Comptroller for a compulsory licence, where the patentee had refused to grant a licence, or where use of an improvement on the invention was being hampered by the master-patentee. It was also provided that a Government department could apply for the patent to be endorsed "licences of right" (i.e., licences must then be granted by the patentee to all who apply for them) on the same grounds as existed for the grant of compulsory licences.

The third group of provisions provided that where a Government department ordered articles from the patentee, any terms between the patentee and any third party which might restrict the supply of the articles for the services of the Crown should be inoperative. No compensation would be payable to the patentee in such case. But where a Government department made and used a patented invention for the services of the Crown, in the absence of agreement as to the amount, compensation would be fixed by the court. Where a third person had suffered loss because the Crown had rendered inoperative an agreement between him and the patentee, such person could claim his share of the compensation paid to the patentee. Where inventions were declared "secret," compensation would be paid to the inventor only if and when the patent was used.

The fourth group of provisions aimed at improvements in patent litigation and reduction of costs. An additional judge would be appointed to deal with patent cases, but no special qualifications would be required of him. Rules of court would enable expert scientific advisers to be appointed to assist the court. Applications would in future be possible for a declaration from the court that the making, selling or using of an article would not infringe patent rights. Infringement disputes could be submitted to the Comptroller, and appeals from him would lie to the Patents Appeal Tribunal, consisting of a judge of the High Court, and thence, in certain cases, to the Court of Appeal.

The fifth set of provisions related to designs. In future the protection afforded by registration would be limited to the article in respect of which the design was registered. Certain articles which were primarily of literary or artistic character would be excluded from registration. The need for making articles with a prescribed registration mark would be abolished, and instead protection was provided for the innocent infringer on the same lines as in the case of patents. [29th March.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time:—

Merchant Shipping (Safety Convention) Bill [H.C.] [30th March.

National Parks and Access to the Countryside Bill [H.C.] [1st April.

Salford Corporation Bill [H.C.] [29th March.

Wandsworth and District Gas Bill [H.L.] [28th March.

B. DEBATES

Mr. SILKIN, in moving the Second Reading of the National Parks and Access to the Countryside Bill, said that the objects

of the Bill were first to preserve and enhance the beauty of the countryside, and secondly to enable people to get to it, see it, and enjoy it. The new "national parks" would differ from those in other countries in that farming, afforestation and other rural industries would continue to function within them. There would be close consultation between the Minister of Agriculture and himself as to agricultural land. There would be no physical fence around the parks, but the public would be informed when they were entering them.

A National Parks Commission would be set up, whose first task would be to select the areas for designation as national parks. The Commission would advise the Minister on development plans in the areas and would be consulted on particular proposals for development, whether by private persons or public bodies. It would select the "areas of great natural beauty," and the long-distance footpaths, and would report annually to Parliament.

The parks would be administered by the park committees, who would be drawn from the local authorities in whose areas the parks fell. In certain exceptional cases there might be an advisory committee instead of a joint board. A quarter of the members would be appointed by the local planning authority after consultation with the National Parks Commission. This would enable the Minister to ensure that the "national" point of view was represented.

Powers were conferred by the Bill to enable local planning authorities to provide accommodation, camping sites, licensed premises, etc.; they would have power to improve waterways, such as the Norfolk Broads, and a warden service would be set up to explain to the public what they can and cannot do. These powers would be reinforced by a system of Exchequer grants of up to 75 per cent., and 100 per cent. in some cases. Wide powers to acquire land for their functions would be conferred on the authorities, and agricultural land so acquired would be handed over to the Agricultural Land Commission.

A Nature Conservancy would be set up, having overlapping membership with the National Parks Commission. As to rights of way, provision was made for disputes as to dedication to go to quarter sessions, and there would be a presumption of dedication after twenty years. Liability for maintenance of footpaths would now rest on the highway authorities. Provision was made for the establishment of "long-distance footpaths." As to access—it was left to the local planning authorities to decide whether or not to apply this part of the Bill. Ramblers would not be trespassers on "access" land so long as they observed the rules set out in the Second Schedule of the Bill. Compensation was payable for depreciation due to granting the public access to land. It was hoped to designate the first parks by 1950. [31st March.

C. Questions

The Attorney-General stated that although the Interim Report of the Leasehold Committee (dealing with business premises) had been presented, it involved problems of great complication and difficulty and required a little consideration before it was published. The Final Report of the Committee on leasehold premises generally was still awaited. [28th March.

Mr. Tom Williams stated that in 1947 the number of applications made by farmers to county agricultural committees for certificates to assist them in obtaining possession of cottages was 2,255, and the number which were granted was 1,134; the corresponding figures in 1948 were 1,858 and 999. [28th March.

Mr. King refused to exempt from development charge land acquired or to be acquired by charitable organisations for the purpose of building homes for the aged. If the charity held the land on 1st July, 1948, it could obtain exemption from development charge under s. 85 (5) of the Act. Land purchased thereafter should be acquired at existing use value and would then cost no more, with a development charge, than it would have cost before the Act. Exemption would not benefit the charity but the seller of the land, who would obtain more for it than he ought to. [29th March.

Mr. King gave the following lists of leaflets available to persons who own or are contemplating buying land for building purposes:—

1. Issued by the Ministry of Town and Country Planning:
   (i) The Town and Country Planning Act, 1947. Notes for the guidance of buyers and sellers of land for development purposes in the period between the passing of the Act and the Appointed Day.
   (ii) P.R.2. The Town and Country Planning Act, 1947—Its effect on private developers and landowners.
   (iii) P.R.3. The Town and Country Planning Act, 1947—Claims for exemption from Development Charge by owners of land ripe for development.
   (iv) P.R.4. The Town and Country Planning Act, 1947—Land held for charitable purposes.
2. Issued by the Central Land Board:
   (i) House 1. Advice on buying and selling a site for building a house.
   (ii) House 2. Payments and Development Charges on single plots owned on or before 1st July, 1948.
   (iii) Explanatory Pamphlet on Development Charge. (Form D.I.A.).

Mr. King stated that both sets of leaflets are available free of charge from the Central Land Board, the Ministry and local authorities. [29th March.

Mr. Chuter Ede stated that an Eireann citizen domiciled in England could give notice at any time of his intention to remain a British subject under s. 2 (1) of the British Nationality Act, 1948. [31st March.

Sir Stafford Cripps stated that a company which issued securities by way of bonus to its members was chargeable with duty of 10 per cent. of the bonus as defined in s. 61 of the Finance Act, 1947, subject to certain exceptions. The value of the bonus, he said, is computed by taking the market value of the rights or securities (in the case of private companies, the nominal value of the securities) and deducting therefrom the value of the consideration, if any, received by the company. [29th March.

Mr. Chuter Ede said that he could hold out no hope of legislation extending the power to make maintenance orders to include children over sixteen years of age who, because of mental deficiency or physical disability, were unable to follow any occupation. [31st March.

Mr. Chuter Ede stated that it was hoped to bring the new Rules of the Criminal Justice Act, 1948, dealing with probation officers, into force on 1st August. [31st March.

Mr. Chuter Ede stated that there were no psychiatrists employed full-time in the prison service, but six were engaged part-time. Five prison medical officers possessed psychiatric qualifications and many others had had mental hospital experience. There were 412 prisoners serving sentences for homosexual offences and those who, in the opinion of the medical officer, would benefit from psychiatric treatment were transferred to prisons where there were psychiatric clinics if their sentences were long enough. During the past six months forty such offenders had received psychiatric treatment at such clinics and thirty-five others had received psychiatric examination and guidance at other prisons. [28th March.

STATUTORY INSTRUMENTS

Local Government (Payment of Grants, etc.) Regulations, 1949. (S.I. 1949 No. 488.)

These regulations set out the manner in which Exchequer Equalisation Grants and Exchequer Transitional Grants to county and county borough councils and payments by county councils to county district councils under Pt. I of the Local Government Act, 1948, are to be made.

Local Government (Compensation) (Amendment) Regulations, 1949. (S.I. 1949 No. 489.)

By these regulations a local government officer is enabled to include war service following one of the prescribed occupations in a defined period in order to qualify for compensation under the Local Government (Compensation) Regulations, 1948.

National Assistance (Compensation) (Amendment) Regulations, 1949. (S.I. 1949 No. 490.)

Compulsory Purchase of Land Regulations, 1949. (S.I. 1949 No. 507.)

These regulations consist of forms to be used for the purposes of the Acquisition of Land (Authorisation Procedure) Act, 1946, and come into force on 1st May, in substitution for the Compulsory Purchase of Land Regulations, 1946, as amended.

Poisons List Order, 1949. (S.I. 1949 No. 538.)

Superannuation (Local Government Staffs) (National Service) Rules, 1949. (S.I. 1949 No. 545.)

Trustee Savings Banks (Rate of Interest) Order, 1949. (S.I. 1949 No. 562.)

Control of Rates of Hire of Plant Order, 1949. (S.I. 1949 No. 567.)

National Health Services (General Dental Services) Amendment Regulations, 1949. (S.I. 1949 No. 564.)

National Health Service (Apportionment of Hospital Endowment Fund) Regulations, 1949. (S.I. 1949 No. 482.)

Aliens (Exemption) (Burma) Direction, 1949. (S.I. 1949 No. 514.)

NON-PARLIAMENTARY PUBLICATIONS

Ministry of Town and Country Planning Circular No. 68. Compensation Appeals Tribunals.

This circular announces the establishment of tribunals to deal with appeals by local government officers arising out of claims for compensation under the Town and Country Planning (Transfer of Property and Officers and Compensation to Officers) Regulations, 1948.

NOTES AND NEWS

Professional Announcement

Avison, Morton, Paxton & Co., of 5 Cook Street, Liverpool 2, have, as from 1st April, 1949, taken into partnership John Tegid Jones, who served his articles with them before the war and since his release from the army has been associated with them. The name of the firm will remain unchanged.

Honours and Appointments

The King has approved the appointment of Sir REGINALD SHARPE, K.C., as Deputy Chairman of the Court of Quarter Sessions for the eastern division of Sussex.

The King has approved the reappointment as Commissioner under the Public Works Loans Act, 1946, of Mr. E. G. M. FLETCHER, M.P., solicitor, of Gray's Inn Place, W.C.1.

The Lord Chancellor has appointed Mr. PHILIP GURNEY COOMBS, Registrar of the Peterborough, Oundle and Thrapston and Stamford County Courts and District Registrar in the District Registry of the High Court of Justice in Peterborough, to be in addition Registrar of the Huntingdon and March County Courts as from 1st April.

The Lord Chancellor has appointed Mr. W. J. WENTWORTH DICKINSON and Mr. L. H. DOVETON HODGES Joint Registrars of the Bristol, Wells and Weston-super-Mare County Courts and District Joint Registrars in the District Registry of the High Court of Justice in Bristol as from 1st April.

Sir CECIL OAKES has been appointed Chairman of the Court of Quarter Sessions for the Eastern Division of the County of Suffolk.

Mr. W. A. CLARKE, chief assistant solicitor to the Town Clerk of Lambeth, has been appointed Solicitor to Welwyn Garden City and Hatfield Development Corporations. Mr. Clarke was admitted in 1935.

Mr. HAROLD D. HOCKING, at present an assistant solicitor to Blackpool Corporation, has been appointed Junior Assistant Solicitor to Huddersfield Corporation. He was admitted in 1940.

Mr. I. H. K. THORNE, Assistant Solicitor to Swindon Corporation and formerly assistant solicitor at Herne Bay, has been appointed Deputy Town Clerk of Royal Leamington Spa. He was admitted in 1902.

Personal Notes

His Excellency the American Ambassador was called to the Bench as an Honorary Bencher at the Middle Temple on 30th March.

Mr. W. E. Hamlin, solicitor and Mayor of Wimbledon, was elected an Alderman at the meeting of the Wimbledon Council held on 23rd March.

Mr. John Marshall, solicitor, of Newbury, has married Miss Patricia Pleydell-Bouverie.

Mr. R. A. Riches, who followed his father as librarian at the Royal Courts of Justice, has entered on his fifty-fifth year of service, at the end of which the combined service of father and son will total 100 years. In 1872 Mr. Robert Riches was appointed librarian of the Chancery Library, Westminster, later transferred to the Royal Courts of Justice, now known as the Probate Court Library. In 1884 Mr. Robert Riches was appointed librarian of the new Bar Library at the Law Courts and was succeeded on his retirement in 1917 by his son, the present librarian.

Mr. F. J. Watts, solicitor, of Dewsbury, who has been in practice for forty years, is retiring this month and leaving the district.

Miscellaneous

The Circuit (Montgomeryshire) Order, 1949, which came into operation on 1st April, provides that the Summer Assize for the County of Montgomery shall be held at Welshpool instead of Newtown this year, and that the Order in Council dated 26th June, 1884, as amended by any subsequent order, and all other Orders, Rules, Precepts, Commitments and Recognisances relating to this year's Summer Assize for Montgomery shall have effect as if any reference to Newtown were a reference to Welshpool.

By an Order coming into force on 25th April, the Lord Chancellor has appointed His Honour Judge Daynes, K.C., to be the Judge for the district of Dartford County Court in addition to the districts for which he is now the judge. His Honour Judge Sir Gerald Hurst, K.C., ceases to be judge for the district of Dartford County Court.

The annual general meeting of the Bar will be held in the New Hall, Lincoln's Inn, on Monday, 25th April, at 3 p.m. The Attorney-General will preside.

The University of London announces that a special University Lecture entitled "Trusts for Sale of Land" will be given at King's College, Strand, by Professor Malcolm M. Lewis, M.A., LL.B., at 5.30 p.m. on Tuesday, 3rd May. Professor H. Potter, LL.D., Ph.D., will be in the chair. Admission is free, without ticket.

British holders of pre-war sterling or zloty bonds which were issued in Poland either by the Polish State or by a Polish Municipality or were guaranteed by the State or a municipality are asked to send details of their holdings immediately to the Secretary, Negotiating Committee for Polish State Commercial Debts, c/o Export Credits Guarantee Department, 54 Gracechurch Street, London, E.C.3.

Wills and Bequests

Mr. Felix Francis Gordon Clark, solicitor, of Cirencester, left £9,903 2s. 8d., net personalty £6,356 17s. 9d.

SOCIETIES

Mr. J. H. S. Addison has been elected president, and Mr. P. Vernon and Mr. G. M. Butts joint honorary secretaries, of the BIRMINGHAM LAW SOCIETY.

At the annual general meeting of the HASTINGS AND DISTRICT LAW SOCIETY, held on 15th March, the following officers were elected: Mr. E. P. Dawes, president; Mr. A. W. K. Brackett, honorary treasurer; Mr. M. C. S. Langdon, honorary secretary; and Mr. E. Willings, honorary librarian. At the meeting the Society unanimously adopted the South-West of England Conveyancing Scale.

At the annual meeting of the SWANSEA AND NEATH INCORPORATED LAW SOCIETY the following officers were elected: Mr. W. R. Francis, president; Mr. A. Lloyd, vice-president; Mr. E. R. Nash, secretary; and Mr. D. O. Thomas, honorary treasurer.

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